

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 30, 2017

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2011-00037

VALIANT HEALTH CARE, INC.  
d/b/a ACCESSIBLE HOME HEALTH CARE,  
Defendant

FINAL ORDER

On January 19, 2012, the State Corporation Commission ("Commission") entered a Rule to Show Cause ("Rule") against Valiant Health Care, Inc. d/b/a Accessible Home Health Care ("Valiant" or "Defendant"). In the Rule, the Commission's Division of Securities and Retail Franchising ("Division") alleged that Valiant violated several provisions of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia ("Code"). Among other things, the Rule docketed the case, established a procedural schedule that included a date by which the Defendant was required to file a responsive pleading, scheduled a hearing and assigned the case to a Hearing Examiner.

The Defendant failed to file a responsive pleading by February 24, 2012, as required in the Rule. Following the response date, the case was continued generally at the Division's request based on the Defendant's pending bankruptcy proceeding. The Division, however, requested that the case move forward after the bankruptcy proceeding concluded in June 2015.

A hearing was convened on February 3, 2016. The Defendant did not appear. Donnie L. Kidd, Esquire, appeared on behalf of the Division. Mr. Kidd represented that the Division had not heard from the Defendant since 2012, the Defendant had not filed a responsive pleading as

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required by the Rule, and the Defendant failed to appear at the scheduled hearing. The Division moved for default judgment. The Division requested that, as part of a default judgment, the Commission find that the Defendant was deemed to: (1) have admitted substantive liability for the violations of the Act as set forth in the Rule; (2) have admitted the allegations supporting those violations; and (3) have waived all objections to the admissibility of any evidence presented.<sup>1</sup>

After the Chief Hearing Examiner accepted evidence regarding proof of service on the Defendant, the Division presented the testimony of Stephen D. Cava, senior investigator with the Division. The Chief Hearing Examiner accepted into evidence Mr. Cava's testimony as well as his affidavit with attachments.<sup>2</sup>

Following the March 22, 2016 hearing, Carl J. Khalil, Esquire, and Sada Sheldon, Esquire, filed a Notice of Appearance as counsel for the Defendant. On November 15, 2016, Mr. Khalil filed notice that he was withdrawing as counsel for Valiant and Ms. Sheldon filed a notice withdrawing as counsel on February 1, 2017. No other pleadings were filed on behalf of the Defendant.

On February 1, 2017, the Chief Hearing Examiner issued her report ("Report") which thoroughly summarized the factual and procedural history of this case, as well as the evidence and arguments presented at the hearing. In her Report, among other things, the Chief Hearing Examiner found that the Division established, by clear and convincing evidence, that the Defendants violated: (i) § 13.1-560 of the Act on one occasion by offering and selling one franchise in the Commonwealth of Virginia ("Virginia") prior to registering the franchise with

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<sup>1</sup> Tr. 4-5.

<sup>2</sup> Tr. 15, 23-24; Exh. 4 (Cava Affidavit).

the Division; (ii) § 13.1-563 (2) of the Act on two occasions by omitting material facts from the disclosures in the offer of a franchise, including failing to disclose to at least one potential franchisee that Aarif Dahod was a principal at Valiant, and failing to inform at least two potential franchisees that Mr. Dahod was convicted of securities fraud; (iii) § 13.1-563 (4) of the Act on one occasion by offering a franchise to a Virginia resident while providing a franchise agreement and a disclosure document which had not been registered with or cleared by the Division as required by rule or order of the Commission; and (iv) 21 VAC 5-110-40 of the Commission's Retail Franchising Act Rules on four occasions by failing to file amendments to the Defendant's registration regarding material changes, including three changes regarding Mr. Dahod's executive positions with the Defendant in 2009.

Based on these findings, the Chief Hearing Examiner recommended, among other things, that: (1) the Commission adopt the findings contained in the Report requiring the Defendant to offer to rescind the two Virginia franchises and penalizing the Defendant \$200,000; (2) offering to waive the monetary penalties if the Defendant provides restitution in the amount of \$71,000 to the two Virginia franchises (\$35,500 each) within ninety (90) days of the entry of any order requiring an offer of rescission; (3) permanently enjoining the Defendant from participating or registering as a franchise in Virginia pursuant to § 13.1-568 of the Act; and (4) awarding the costs of the investigation pursuant to § 13.1-567 of the Act in the amount of \$21,528.<sup>3</sup>

The Report allowed the parties 21 days to provide comments. Neither the Defendant nor the Division filed comments.

NOW THE COMMISSION, upon consideration of the Rule, the record, the Chief Hearing Examiner's Report and the applicable statutes, is of the opinion and finds that the

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<sup>3</sup> Exh. 4 at 8.

Chief Hearing Examiner's overall findings and recommendations are reasonable and should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The Division's motion for judgment by default is hereby GRANTED.
- (2) The Defendant, pursuant to § 13.1-570 of the Act, may offer to rescind the two (2) Virginia franchises and, if the offer is accepted, pay restitution in the amount of Seventy-one Thousand Dollars (\$71,000) to the two Virginia franchises (\$35,500 each).
- (3) The Defendant is hereby PENALIZED, pursuant to § 13.1-570 of the Act, the sum of Two Hundred Thousand Dollars (\$200,000). This penalty, however, shall be waived if the Defendant complies with the requirements of Ordering Paragraph (2) and submits proof to the Division of such compliance within ninety (90) days of the entry of this Order.
- (4) The Defendant is hereby DIRECTED, pursuant to § 13.1-567 of the Act, to pay the sum of Twenty-one Thousand Five Hundred Twenty-eight Dollars (\$21,528) for the costs of the Division's investigation.
- (5) The Defendant is hereby PERMANENTLY ENJOINED from registering or participating as a franchise in Virginia.
- (6) The Defendant is hereby PERMANENTLY ENJOINED from any future violations of the Act.
- (7) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission, by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to: David Lloyd Merrill, Esquire, Merrill PA, Trump Plaza Office Center, 525 South Flagler Drive, 5<sup>th</sup> Floor, West Palm Beach,

Florida 33401; Tina M. Talarchyk, Esquire, The Talarchyk Firm, The Worth Avenue Building, 205 Worth Avenue, Suite 320, Palm Beach, Florida 33480; and Jon H. Klapper, Valiant Health Care, Inc., 3111 North University Drive, Suite 625, Coral Springs, Florida 33065; and copies shall be mailed to the Commission's Office of General Counsel and Division of Securities and Retail Franchising.